

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOSE SORIANO,)
)
Petitioner,)
)
vs.) **Case No. CIV-13-36-F**
)
JUSTIN JONES, Director,)
Oklahoma Dep't of Corr.)
)
Respondent.)

SUPPLEMENTAL REPORT & RECOMMENDATION

Petitioner, a state prisoner appearing pro se, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Pursuant to an order entered by United States District Judge Stephen P. Friot, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

In the Report and Recommendation also entered on March 6, 2013, ECF No. 8, it was recommended that the petition be dismissed upon filing as untimely. That Report and Recommendation stated that the limitations period expired on May 18, 2012.

However the correct date for the expiration of the limitations period, with statutory tolling, was October 30, 2012. The limitations period was tolled on August 11, 2011, with 279 days left in the one-year limitations period, and began to run again on January 25, 2012; thus, the Petition was filed over **two months** after the limitation period expired.

This does not affect the previously recommended disposition of this action, and for the same reasons stated in ECF No. 8, it is recommended that the action be

dismissed on filing as untimely.

RECOMMENDATION

Based upon the foregoing analysis, and that contained in the previously entered Report and Recommendation, ECF No. 8, it is recommended that the petition be dismissed upon filing as untimely. Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by **March 25, 2013**, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal questions contained herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991). The Clerk of Court is hereby directed to send a copy of this Report and Recommendation to the Attorney General for the State of Oklahoma on behalf of the Respondent at fhc.docket@oag.state.ok.us.

STATUS OF THE REFERRAL

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED March 6, 2013.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE